

**REMARKS/ARGUMENTS**

Claims 1-81 are pending in the present application, and stand rejected. Applicant respectfully requests reconsideration and withdrawal of the rejection of the application, consistent with the following remarks.

The Examiner has rejected claims 1-12, 18-29, 35-46, 52-63, 66-77, and 80-81 under 35 USC § 103(a) as being obvious over Nagahama (U.S. Patent No. 5,636,277) in view of Krishnan (U.S. Patent No. 6,073,124). Applicant respectfully traverses the § 103(a) rejection.

Independent claim 1 recites a method of issuing a digital license to a customer for a corresponding piece of digital content, where the content originates from a retailer. In the method, a license request is received for the license from the customer, where the request includes retailer information associated with the corresponding piece of digital content and identifying the retailer. A payment is received from the customer in connection with the license request. The retailer information is received from the license request and the retailer is identified from such retailer information, and the identified retailer is credited for a portion of the payment received.

Independent claim 18 recites the subject matter of claim 1, although in the form of a computer-readable medium, and independent claim 35 recites the subject matter of claim 1, although in the form of a computer. Independent claim 52 recites the subject matter of claim 1 except that the identified retailer is credited for the requested license as issued.

As is to be appreciated, and as set forth in the specification of the present application at about page 57 thereof, there are a multitude of scenarios in which a customer may obtain a piece of digital content and also obtain a corresponding yet separate digital license. For one

example, the customer may visit a retailer and upon payment of a fee thereto obtain the aforementioned content and the license from a licensor. For another example, the customer may obtain the content as originally distributed by way of a retailer or as re-distributed from an intermediary such as another customer, and then visit a licensor and upon payment of a fee thereto obtain the license.

As used here, a retailer is any sales agent operating a sales site for 'selling' the content, and a licensor is any licensing agent that operates a licensing site for granting a license that permits use of the content. In any case, the party collecting the payment (i.e., the retailer or the licensor) likely is expected to share the proceeds with the other party (i.e., the licensor or the retailer). Also, if the obtained content is re-distributed to another individual (a friend of the customer, e.g.), and the individual obtains its own license by way of payment to the retailer or the licensor, the retailer and licensor likely wish to share the proceeds from that payment, too. Moreover, if the same originally obtained content is re-distributed several times, the retailer and licensor may wish to share the proceeds from payments for corresponding licenses in a manner dependent on the number of licenses issued in connection with the originally obtained content. In such a situation, then, the mechanism of the present invention as set forth in the recited claims is necessary.

The Nagahama reference discloses a system for licensing a software product to a purchaser thereof. In particular, and as best seen in Fig. 4, in the Nagahama system, a software vendor creates and encrypts the product and packages the product to include content info such as a decryption key (steps s1 and s2). As the packaged product is distributed through a wholesaler and retailer to an end-user, wholesaler and retailer shop information is added to the package (steps s4 and s7), and the retailer upon distributing the package to the

end-user also sends the end-user the decryption key (steps s8 and s10) presumably in exchange for a payment. The retailer then sends payment information including product information and shop information to the wholesaler (step s12), and the wholesaler in turn sends payment information including product information and shop information to the vendor (step s15).

Significantly, and as should be appreciated, the Nagahama system does not in actuality issue a digital license to the end-user for the corresponding product, as is required by claims 1, 18, 35, and 52. Thus, and as the Examiner concedes, the Nagahama reference does not disclose or suggest that the Nagahama end-user sends a license request for a license, where such a license request includes retailer information associated with the corresponding piece of digital content and identifying the retailer, as is also required by such claims. Thus, the Nagahama system cannot receive retailer information from such a license request and cannot identify the retailer from any such retailer information and credit same, as is further required by such claims.

Nevertheless, the Examiner argues that the Krishnan reference discloses such features, and specifically points to column 9, lines 24-67.

The Krishnan reference discloses a system for facilitating digital commerce wherein a client obtains content from a content server and then obtains an electronic license certificate (ELC) or license from a licensing broker / server. However, a close reading of the Krishnan reference and column 9, lines 24-67 thereof fails to disclose or suggest that the Krishnan license is obtained based on a request that includes retailer information associated with the corresponding piece of digital content and identifying the retailer, as is required by claims 1, 18, 35, and 52, or that a payment is received from the customer in connection with the license

request, as is also require by the claims. Thus, the Krishnan retailer cannot be identified from any such retailer information and credited, as is also required by such claims.

To sum up, then, Applicant respectfully submits that neither the Nagahama not the Krishnan references, alone or combined, disclose or suggest obtaining a license based on a request that includes retailer information associated with a corresponding piece of digital content and identifying the retailer, as is required by claims 1, 18, 35, and 52. Accordingly, and for all the aforementioned reasons, Applicant respectfully submits that the Nagahama reference and the Krishnan reference cannot be applied to make obvious such claims 1, 18, 35, or 52, or any claims depending therefrom.

Independent claim 66 is similar to claim 1, but recites a method of issuing a digital license to a customer for a corresponding piece of digital content, where the content originates from an originating customer. In the method, a license request is received for the license from the requesting customer, where the request includes originating customer information associated with the corresponding piece of digital content and identifying the originating customer. The originating customer is identified from the request and is credited for a portion of the payment received.

For the same reasons as set forth above, Applicant respectfully submits that neither the Nagahama not the Krishnan references, alone or combined, disclose or suggest obtaining a license based on a request that includes originating customer information associated with a corresponding piece of digital content and identifying the originating customer, as is required by claim 66. Moreover, Applicant takes issue with the Examiner's taking of Official Notice that a 'customer and retailer' is equivalent to a 'requesting customer and an originating customer' as at page 3 of the Office Action.

In particular, Applicant respectfully points out that the Examiner has improperly taken Official Notice in rejecting claims 66-77 under § 103(a). As stated in MPEP 2144.03, the rationale supporting an obviousness rejection may be based on common knowledge in the art or "well-known" prior art. In particular, the Examiner may take official notice of facts outside of the record which are capable of instant and unquestionable demonstration as being "well-known" in the art (emphasis added). Thus, Applicant respectfully submits that official notice is meant to be taken with regard to facts that on their face are undeniable, such as 'water boils upon being sufficiently heated', 'gravity pulls objects toward each other', and 'gasoline is combustible'. In contradistinction, Applicant also respectfully submits that official notice is not meant to be taken with regard to facts such as whether one set of entities is equivalent to another set of entities, especially if such entities are central to a claim.

MPEP 2144.03 also sets forth that assertions of technical facts in areas of esoteric technology must always be supported by citation of some reference work, and allegations concerning specific 'knowledge' of the prior art, which might be peculiar to a particular art should also be supported. Significantly, officially noticed facts are intended to fill the gaps which might exist in an evidentiary showing and should not comprise the principle evidence upon which a rejection is based.

Applicant respectfully submits that the elements / limitations of which Official Notice are taken are not even facts outside of the record which are capable of instant and unquestionable demonstration as being 'well-known' in the art. Undoubtedly, whether a 'customer and retailer' is equivalent to a 'requesting customer and an originating customer' is not capable of instant and unquestionable demonstration as being well known, and can certainly be open to question. Thus, Applicant requests that the Examiner support each and

every taking of Official Notice with suitable evidence, or that the taking of Official Notice be withdrawn.

Accordingly, and for all the aforementioned reasons, Applicant respectfully submits that the Nagahama reference and the Krishnan reference cannot be applied to make obvious claim 66 or any claims depending therefrom.

Thus, Applicant respectfully requests reconsideration and withdrawal of the § 103(a) rejection.

The Examiner has rejected claims 64, 65, 78, and 79 under 35 USC § 103(a) as being obvious over the Nagahama and Krishnan references, and further in view of Powell (U.S. Publication No. 2001/0032189). Applicant respectfully traverses the § 103(a) rejection.

Applicant respectfully submits that since independent claims 52 and 66 have been shown to be non-obvious, then so too must all claims depending therefrom be non-obvious, including claims 64, 65, 78, and 79, at least by their dependency. Thus, Applicant respectfully requests reconsideration and withdrawal of the § 103(a) rejection.

The Examiner has rejected claims 13-17 under 35 USC § 102(e) as being anticipated by the Krishnan reference, and has rejected claims 30-34 and 47-51 under 35 USC § 103(a) as being obvious over the Krishnan reference in view of Official Notice. Applicant respectfully traverses the § 102(e) and § 103(a) rejections.

Independent claim 13 recites a method of distributing digital content from a retailer to a customer. In the method, the content as issued by a content provider is retrieved by the retailer, where the as issued content has license acquisition information for acquiring a corresponding license attached thereto, where the license acquisition information includes a site identifier identifying a site at which the customer may obtain a digital license

corresponding to the content, and where the site identifier in the license acquisition information attached to the as issued content includes an additional information field attached thereto.

Such additional information field is modified by the retailer to include retailer information identifying the retailer, and the content with the modified additional information field is delivered to the customer. Thus, a license request sent from the customer is addressed to the site identified by the site identifier in the license acquisition information and includes the modified additional information field attached thereto.

Independent claim 30 recites the subject matter of claim 13, although in the form of a computer-readable medium, and independent claim 47 recites the subject matter of claim 13, although in the form of a computer.

Once again, the Examiner argues that the Krishnan reference discloses such features, and specifically points to column 9, lines 1-67 and column 13, lines 25-55. However, and again, a close reading of the Krishnan reference and column 9, lines 24-67 and column 13, lines 25-55 thereof fails to disclose that an additional information field attached to a site identifier in license acquisition information is modified by the Krishnan content server to include retailer information identifying a retailer, as is required by claims 13, 30, and 47.

Thus, Applicant respectfully submits that the Krishnan reference cannot be applied to anticipate or make obvious such claims 13, 30, or 47 or any claims depending therefrom. Thus, Applicant respectfully requests reconsideration and withdrawal of the § 102(e) and § 103(a) rejections.

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In view of the foregoing Amendment and discussion, Applicant respectfully submits that the present application, including claims 1-81, is in condition for allowance, and such action is respectfully requested.

Respectfully submitted,

  
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